

IN THE
United States District Court
FOR THE
Northern District of Illinois
Western Division

FILED

DEC 29 2008

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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Docket No. 05-CR-50052

United States of America,
Plaintiff/Respondent

v.

Kenneth R. Dowthard,
Defendant/Petitioner

The Honorable Judge
Philip G. Reinhard

Motion for Judgement

Comes now petitioner, Kenneth R. Dowthard, pro-se, in the above captioned matter, respectfully requesting this Court to enter judgement in his favor pursuant to the Federal Rules of Civil procedure (FRCP) 54 (c). In support of said request the petitioner submits the following.

I Procedural History

On August 19, 2008, the petitioner submitted to this Honorable court a petition pursuant to Title 28 USC § 2255 requesting that this court vacate, set aside or reduce his sentence.

On August 22, 2008, the Honorable Judge Philip G. Reinhard distributed to the parties a scheduling order, more specifically ordering the Government to

respond to the petitioners brief by December 19, 2008.

As of the date of this writing, the Government has failed to adhere to this court's order or otherwise respond to the petitioners brief.

II Legal Analysis

Habeas Corpus action (i.e. § 2255) are governed by the Federal rules of civil procedure (FRCP).

Rule II specifically states that;

"The Federal rules of civil procedure apply to Habeas Corpus action to the extent that they are not inconsistent with any statutory provisions or these rules may be applied to a proceeding under these rules".

Rule 5 (a) of the FRCP governs when a respondent is mandated to respond to a petitioners brief and that is only when a judge so orders, as is the case here.

The rules, as related to the Habeas section, is devoid of any provision dealing with a party who fails to answer or is otherwise in default. As such, pursuant to Rule II, the petitioner respectfully directs the court to FRCP 54 (c) and demands judgement.

III Conclusion

As a result of the Governments refusal to respond to the petitioner brief, and by inference, discarding this court's order, the petitioner humbly request that this court default the Government, enter judgement in favor of the petitioner and grant him all the relief requested in his Title 28 USC § 2255 motion to set aside, vacate or correct sentence.

Respectfully Submitted

Kenneth R. Dowthard
Petitioner/pro-se
Reg. No. #12692-424
USP-Marion
P.O. Box 1000
Marion, IL 62959

Certificate of Service

I hereby certify that a copy of the foregoing motion was mailed on this 22 day of December 2008, first class mail, postage pre-paid addressed to:

John G. McKenzie
Assistant United States Attorney
308 W. State Street
room 300
Rockford, IL 61101
(815) 987-4444

I further certify that the above is a true and accurate statement subject to the penalty of perjury pursuant to Title 28 USC § 1746.

So sworn this 22 day of December, 2008,

Kenneth Dowthard

Kenneth R. Dowthard
Petitioner/pro-se
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